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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/988,920 | 11/19/2001 | Michimune Kohno | 7217/65966 | 9369 |
| 7590 06/16/2004 | | | EXAMINER | |
| COOPER & DUNHAM LLP 1185 Avenue of the Americas New York, NY 10036 | | | PUENTE, EMERSON C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2113 | |

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 09/988,920 | Applicant(s) KOHNO ET AL. | |
| | Examiner Emerson C Puente | Art Unit 2113 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

This action is made Non-Final. Claims 1-10 have been examined.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 9 is rejected under 35 U.S.C. 101 because claimed invention is directed to non-statutory subject matter.

In regards to claim 9, a computer program is merely a set of instructions capable of being executed by a computer. The computer program itself is not a process. A computer program, without the computer-readable medium needed to realize the program's functionality, is nonstatutory functional descriptive material. See MPEP § 2106.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 1-3,5-7, and 9-10 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,708,227 of Cabrera et al. referred hereinafter "Cabrera".

In regards to claim 1, Cabrera discloses a data processing apparatus having a central processing unit and a memory, the apparatus comprising:

a driver controlling an operation of writing/reading of a recording medium (see figure 5 item 100 and column 4 lines 49-55); wherein

if there is a request for a status-storing process from a component, a dependency relation of said component and/or stored data is stored as a snap shot file in said recording medium. Cabrera discloses a backup application B requesting for snapshot service (see column 9 lines 20-25) and the snapshot set with identification information being return to application B (see column 9 lines 35-42); and

if there is a request for a status recovering process, a status of the component is recovered based on said snap shot file stored in said recording medium (see column 4 lines 30-33).

In regards to claim 2, Cabrera discloses

wherein said snap shot file includes a tag having a name or identification of said component (see column 8 line 66 to column 9 line 2)

In regards to claim 3, Cabrera discloses

wherein said status-storing process and said status recovering process call a function existing in a particular address for each of said component. It is inherent to call a function existing in a particular address for each component because a function at a particular address needs to be called for the processes to run. Otherwise, the status-storing process and said status recovering process would not occur.

In regards to claim 5, 9, and 10, Cabrera discloses:

controlling writing/reading of a recording medium, said controlling performed by a driver (see figure 5 item 100 and column 4 lines 49-55);

storing a dependency relation of said component and/or stored data as a snap shot file in said recording medium when there is a request for a status-storing process from a component. Cabrera discloses a backup application B requesting for snapshot service (see column 9 lines 20-25) and the snapshot set with identification information being return to application B (see column 9 lines 35-42); and

recovering a status of said component based on said snap shot file stored in said recording medium when there is a request for a status recovering process (see column 4 lines 30-33).

In regards to claim 6, Cabrera discloses:

wherein said snap shot file includes a tag having a name or identification of said component (see column 8 line 66 to column 9 line 2)

In regards to claim 7, Cabrera discloses:

wherein said status-storing process and said status recovering process call a function existing in a particular address for each of said component. It is inherent to call a function existing in a particular address for each component because a function at a particular address needs to be called for the processes to run. Otherwise, the status-storing process and said status recovering process would not occur.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 8 are rejected under 35 U.S.C. **103(a)** as being unpatentable over Cabrera.

In regards to claim 4 and 8, Cabrera fails to explicitly disclose:

wherein said recording medium is a portable recording medium.

However, Cabrera also teaches the use of removable optical disks, magnetic cassettes, flash memory cards, etc, indicating portable recording mediums, to store information (see column 6 lines 45-51).

It would have been obvious to one of ordinary skill in the art at the time the invention was made wherein the recording medium is a portable recording medium. A person of ordinary skill in the art would have been motivated because Cabrera discloses having snapshots returned to the backup application, indicating storage of snapshots to a storage medium (see column 9 lines 40-42), and removable optical disks, magnetic cassettes, flash memory cards, etc, which constitutes as portable recording mediums, as per secondary teachings of Cabrera, enable storage of the snapshots.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

See Form PTO-892.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emerson C Puente whose telephone number is (703) 305-8012. The examiner can normally be reached on 8-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W Beausoliel can be reached on (703) 305-9713. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5631.

Emerson Puente
6/13/04


ROBERT BEAUSOLIEL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100